



**Texas Association of Health Plans**

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House Insurance Committee

via email to Committee Clerk Sergio Cavazos at [Sergio.Cavazos\\_HC@house.texas.gov](mailto:Sergio.Cavazos_HC@house.texas.gov)

Chairman Lucio,

The Texas Association of Health Plans (TAHP) is the statewide trade association representing health insurers, health maintenance organizations, and other related health care entities operating in Texas. Our members provide health and supplemental benefits to Texans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid.

The COVID-19 pandemic poses unprecedented challenges to Texas and our nation, touching every facet of American life. Since the beginning of the COVID-19 pandemic, health plans have been fully committed to helping solve this crisis. Every American deserves affordable, comprehensive coverage that provides them with access to safe and convenient care and peace of mind, and no one should hesitate to get tested or treated for COVID-19 because of concerns about cost.

In the face of these challenges, Texas health plans are committed to curbing the virus and helping Texans receive the testing and care they need to stay healthy — including eliminating out-of-pocket costs for COVID treatment and testing. We expanded access to care by encouraging and expanding telehealth services and waiving cost sharing, helping Texans receive the care they need from the safety of their homes. We have also launched new mental health services for millions of Texans. Health plans know the unprecedented challenges Texans and Texas employers face as result of the most rapid and severe economic slowdown ever experienced in our country. That's why we are helping our members stay covered by offering grace periods and premium discounts. We also recognize the immense toll this virus is taking on doctors, nurses, and other frontline health care heroes, and we are proud to support those who need assistance by providing financial relief through direct donations, advanced payments, and, in many cases, changing our payment models to help primary care physicians.

We are writing to provide information in response to your RFI regarding the prevalence of price gouging and surprise billing for COVID-19 testing in Texas, as well as the anticipated impact of the pandemic on the health insurance market.

**Interim Charge Questions #1 and #2**

In Texas, health plans are seeing a dangerous new trend in which a small number of providers are billing outrageous amounts for COVID-19 testing. While most providers charge about \$100 - \$250 per test, some providers — primarily freestanding emergency rooms (FSERs) — are price gouging Texans for tests with charges of over \$1,000.<sup>123</sup> Many FSERs also regularly pile on thousands of dollars more in physician, facility, observation, or other fees and unnecessary tests associated with the visit. These combined charges are often more than 2,000% of what Medicare pays. In many of these cases, Texas patients received drive-thru testing, where no real medical care was delivered other than the COVID-19 test. Total claims for COVID-19 testing can be over \$3,000 for a single drive-thru test, easily meeting Texas' new FSER price gouging threshold.

American's Health Insurance Plans recently released data from a national survey showing that price gouging for COVID tests is a significant problem.<sup>4</sup> According to the survey, the average cost for a COVID-19 test in the commercial market is \$130, but out-of-network providers charged significantly higher prices (more than \$185) for nearly 40% of diagnostic tests and 25% of antibody tests. About 10% of out-of-network test claims charged more than \$390, which is three times the average cost. **These exorbitant prices for COVID-related care are just the latest in a long line of examples demonstrating the need for stronger protections against price gouging and unfair billing practices for health care services.**

Texas FSERs have a long history of misleading patients about their prices and network status. According to a 2018 AARP investigation, 77% of Texas independent FSERs used confusing language — such as stating they “take” or “accept” insurance — when they were not in network with any major health plan, and 30% of FSER websites did not comply with applicable state disclosure laws.<sup>5</sup>

In August, TAHP sent a letter<sup>6</sup> to Gov. Greg Abbott, Attorney General Ken Paxton, Chairman Lucio, Health and Human Services Executive Commissioner Cecile Young, and other state leaders outlining our concerns regarding price gouging and surprise billing related to COVID-19 testing. Although FSERs recently claimed otherwise, they are not legally required to charge any particular fees, and they are certainly not required to price gouge Texans for COVID-19 testing. Many FSERs are actively choosing to charge prices that are exorbitantly higher than the actual cost of providing the tests. In fact, FSERs that treat all COVID tests as emergencies are potentially violating licensing laws as the vast majority of COVID tests, particularly drive-thru tests, are not provided in true emergency situations. Additionally, although federal law (the

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<sup>1</sup><https://www.nytimes.com/2020/06/16/upshot/coronavirus-test-cost-varies-widely.html?action=click&module=RelatedLinks&pgtype=Article>

<sup>2</sup><https://www.politico.com/news/2020/06/08/coronavirus-test-costs-304058>

<sup>3</sup><https://www.propublica.org/article/how-a-covid-19-test-led-to-charges>

<sup>4</sup>[https://www.ahip.org/wp-content/uploads/202008-AHIP\\_COVID-PriceGouging.pdf](https://www.ahip.org/wp-content/uploads/202008-AHIP_COVID-PriceGouging.pdf)

<sup>5</sup><https://states.aarp.org/texas/survey-finds-consumers-misled-by-freestanding-er-language>

<sup>6</sup>[https://cdn.ymaws.com/www.tahp.org/resource/collection/EB93519E-8BF7-420C-AE3E-D366047708C2/8-6-20\\_%e2%80%93\\_HHSC\\_Letter\\_%e2%80%93\\_FSER\\_Request\\_for\\_License\\_Expansion\\_FINAL.pdf](https://cdn.ymaws.com/www.tahp.org/resource/collection/EB93519E-8BF7-420C-AE3E-D366047708C2/8-6-20_%e2%80%93_HHSC_Letter_%e2%80%93_FSER_Request_for_License_Expansion_FINAL.pdf)

CARES Act) requires health care providers to post the cash price for their COVID-19 tests on their website, many are either not doing so or are billing health insurers with charges that are many times more expensive than the posted price. Many FSERs are also still not in compliance with the notice and other consumer protection requirements of Texas law (HB 2041).

Texans who are covered in the commercial market are protected from surprise billing as a result of SB 1264, but additional protections are needed for Texans who receive their health coverage through an employer that is not using traditional insurance (ERISA self-funded plans, often referred to as “administrative services only” (ASO) plans). That being said, Texas health plans are not seeing providers bill uninsured patients these exorbitant amounts. Instead, they focus their price gouging on bills sent directly to health insurance providers. Patients are less likely to notice these charges to their health plans, but when they do, they are shocked and often report these outrageous charges to the media.

When it comes to national media scrutiny of COVID price gouging, few states can match Texas. Journalists from The New York Times,<sup>7</sup> ProPublica,<sup>8</sup> Politico,<sup>9</sup> and other major outlets continually find price gouging horror stories in our state. In one case, two friends went to the same FSER for a drive-thru COVID test. One was charged \$199 — the other was charged nearly \$6,500.

### **Recommendations to Address Testing Concerns**

Many states have committed to combating fraud and price gouging during the COVID-19 crisis. TAHP and our member plans are fully supportive of protecting Texans with stronger state and federal action aimed at preventing price gouging and prohibiting surprise billing for all health care related to COVID-19.

No Texan should be price gouged for health care, and certainly not during a global pandemic. Price gouging negatively affects affordability for everyone, and — with millions of Texans suffering from economic uncertainty — it has never been more important to rid our health care system of unfair billing practices. To protect Texas patients and businesses from price gouging and surprise billing for COVID-19 testing and care, **TAHP recommends our state leaders take the following actions:**

1. Prohibit excessive fees, including observation and facility fees, for all drive-thru and asymptomatic testing.
2. Enforce requirements that all providers post their true test charges.
3. Prohibit surprise billing for all COVID-19 testing and treatment.

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<sup>7</sup><https://www.nytimes.com/2020/06/29/upshot/coronavirus-tests-unpredictable-prices.html>;  
<https://www.nytimes.com/2020/06/16/upshot/coronavirus-test-cost-varies-widely.html?action=click&module=RelatedLinks&pgtype=Article>

<sup>8</sup><https://www.propublica.org/article/how-a-covid-19-test-led-to-charges>

<sup>9</sup><https://www.politico.com/news/2020/06/08/coronavirus-test-costs-304058>

4. Enforce current laws regulating FSERs (HB 2041) to avoid inappropriate care, excessive charges, and surprise balance billing.
5. Use existing authority (HB 1941) to protect patients by going after bad-acting providers that price gouge Texas patients at prices well above what is typically charged in the market.

#### **Interim Charge Question #4**

With all the uncertainty about how long the world will be dealing with COVID-19 and its consequences, it can be difficult to project the pandemic's effect on health insurance premiums and the industry overall. Recent projections have shown that COVID-related costs to the health insurance industry will be between \$30 billion and \$547 billion over the next two years,<sup>10</sup> and the financial impact will likely vary greatly based on geography, COVID-19 severity, the mix of members and business that an insurance provider has, and many other factors. There will not be a uniform impact across the industry.

Right now, our member health plans are focused on helping Texans make it through this crisis. We are working to help people avoid getting sick and to help patients with COVID-19 get well. But with millions of confirmed cases in the United States — and over 500,000 here in Texas — it's important to remember that this virus is not going to simply disappear. Texas has seen significantly more hospital and ICU stays than most other states and more uncertainty is expected through the Fall.

While some patients are delaying elective and non-urgent procedures until COVID-19 is behind us, we must assume that care will be delivered and paid for later. Unlike auto insurers that don't have to assume car accidents avoided today will happen tomorrow, health insurers must assume many of those patients are going to receive that deferred care in the future. And it's possible that the care eventually provided will be more complex and costly due to the delay. Health insurers must be there to cover all costs, both from COVID-19 — which could exceed half a trillion dollars over two years — and from the expected surge of previously-deferred medical care we have always covered, from elective surgeries to managing chronic conditions like diabetes.

Other possibilities include a new spike of COVID-19 and flu cases this Fall, high costs for long-term health conditions resulting from COVID-19, and higher costs for patients with chronic conditions who delayed care during the pandemic. These unknowns, along with the expected costs of ongoing testing, will continue into the 2021 premium year. The total cost for diagnostic and antibody testing is expected to be in the range of \$11 billion to \$44 billion a year.<sup>11</sup> Health plans must also plan to cover hundreds of millions of eventual COVID-19 vaccines, likely without charging co-pays or coinsurance.

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<sup>10</sup>[https://www.ahip.org/wp-content/uploads/AHIP-COVID-19-Modeling-Update\\_Wakely-2020.06.pdf](https://www.ahip.org/wp-content/uploads/AHIP-COVID-19-Modeling-Update_Wakely-2020.06.pdf)

<sup>11</sup><https://www.ahip.org/wp-content/uploads/AHIP-Wakely-COVID-19-Testing-Report.pdf>

However, it's important to note that if these costs are less significant than expected and remain below certain levels, Texas health plans' profits and overhead (MLR) are always capped, which means Texas consumers and businesses are always protected. Texas health plans are required to refund this money through premium rebates to Texas consumers and employers.

Thank you for your leadership on this important issue. TAHP and our members appreciate your receptiveness to the information and perspectives we provide in this letter. As you continue to explore legislative options to ensure Texans are not price gouged for COVID-19 testing, we stand ready to work with you to help solve this serious problem.

Sincerely,

A handwritten signature in cursive script that reads "Jamie Dudensing".

Jamie Dudensing, RN  
CEO, Texas Association of Health Plans